

Moultonborough Planning Board
P.O. Box 139
Moultonborough, NH 03254

Public Meeting

March 23, 2022

Minutes – REV 1

Present: Members: Allen Hoch, Scott Bartlett, Norman Larson, Sandra Kelly,
Kevin Quinlan (Selectmen's Representative)
Alternate: Peter Claypoole
Excused: Brie Stephens
Staff Present: Dari Sassan, Town Planner; Bonnie L. Whitney, Administrative Assistant

I. Call to Order: Chairman Hoch called the meeting to order at 7:00 PM.

II. Pledge of Allegiance: The Pledge of Allegiance was recited, led by Chairman Hoch. The members then introduced themselves to the public. The Chair appointed Peter Claypoole to sit on the board with full voting privileges.

III. Review/Approval of Minutes:

Motion: Mr. Bartlett made the motion to approve the Planning Board Minutes of March 9, 2022, as written. Ms. Kelly Seconded. The Motion carried unanimously.

Motion: Ms. Kelly made the motion to approve the Planning Board Public Hearing Minutes of March 14, 2022, as written. Mr. Quinlan Seconded. The Motion carried unanimously.

IV. New Submissions:

1. Robert & Rana Belanus (161-18) (Frye Road)
Two Dwellings on a Lot

Chairman Hoch stated that this was an application for two dwellings on a lot, asking Planner Sassan if the application was ready for acceptance for the purposes of scheduling a public hearing?

Planner Sassan spoke to the completeness of the application as noted in his Staff Memo. He noted that there is sufficient land area of adequate soils and slopes which allow for the compliant placement of two dwellings on this currently vacant land. Mr. Sassan stated that the application is complete, and Staff recommends that the application for two dwellings on a lot be approved pursuant to Zoning Article 3.6.1.

Chairman Hoch questioned the need for a vote regarding potential for regional impact with this application. Planner Sassan replied that would be fine and recommended that it is not.

Motion: Ms. Kelly made the motion that the Board determine that the Application of Robert & Rana Belanus (161-18) does not have the potential for regional impact. Mr. Larson Seconded. Motion carried unanimously.

The Chair asked if there were any questions or comments from the Board as to the completeness of the application? Hearing none, he called for a motion.

Motion: Mr. Quinlan made the motion to accept the application of Robert & Rana Belanus (161-18) (Frye Road), and to schedule a hearing for this evening to be Hearing #1. Ms. Kelly Seconded. The Motion carried unanimously.

V. Boundary Line Adjustments: - None

VI. Hearings:

**1. Robert & Rana Belanus (161-18) (Frye Road)
Two Dwellings on a Lot**

Robert Belanus presented the application for two dwellings on a lot. Mr. Belanus stated the reason for his request is so that he may be able to build a small apartment inside a barn, and then work to construct a house. Due to the difficulty in hiring builders or contractors, he was looking at a time frame of 2023 or beyond. With the approval for two dwellings on the lot, it will give him the ability to build the garage and apartment, occupy it and then work on building the house.

Mr. Bartlett questioned if there was presently anything on the lot. Mr. Belanus stated no, it is vacant.

Mr. Larson questioned who prepared the unit density calculations. Mr. Belanus noted it was Andrew Seraikas, who is the site engineer and septic designer. The applicant has received NHDES septic approval for a 4-bedroom house with a 2-bedroom apartment in the barn with at total flow of 900 GPD.

Planner Sassan recommended approval of the application for Robert & Rana Belanus based on the motion language as suggested in the staff memo.

There being no further questions or comments from the Board, the Chair closed the Public Hearing.

Motion: Mr. Bartlett moved to approve the request to place a second dwelling at Frye Road, Tax Map 161 Lot 18, as requested by Robert & Rana Belanus, subject to compliance with the following conditions: 1) All necessary permits and approvals, including E-911 addresses, updated driveway permits, septic approvals and building permits shall be obtained prior to construction and occupancy of any new structures or improvements. 2) Compliance with Groundwater Protection Ordinance requirements shall be perpetually maintained. Mr. Larson Seconded. Motion carried unanimously.

**2. Continuation of Public Hearing for Koss Construction LLC (140-16 & 170-12) Bean Road -
Boundary Line Adjustment, Subdivision (Condominium form of Ownership), Site Plan Review,
and Conditional Use Permit**

Chairman Hoch stated that this was a continued hearing for the Koss Construction project.

Planner Sassan briefly recapped where the board was. There are applications before the board for site plan review, conditional use permit, condominium subdivision and a voluntary merger. The applicant has submitted the traffic study. At this time, the applicant is also before the Zoning Board for two variances, which has been continued to April 6, 2022. Mr. Sassan stated there have been some determinations that are set forth in his staff report which the Board began to review at the prior meeting. He recommended the board revisit those. The case has been noticed as a development of regional impact. The applicant has requested waivers regarding parking and road standards. Planner Sassan commented that he felt that road standards could be addressed this evening, the 20 foot verses 24 foot roadway width. The Planner noted that they have not received the 3rd party engineer review back at this time. The applicant's agent had conveyed to the Planner that they would have a well expert present this evening to give a presentation and answer questions from the board. Mr. Sassan reiterated that he recommended that in addition to hearing

from the applicant, that the board address some of the determinations that are identified in his staff report provided to the board for their meeting held on March 9, 2022, including the density determination.

Mario Focareto of Brown Engineering was present representing the Applicant Koss Construction, LLC. Also present in the audience were Abigail Fopiano of Edgewater Strategies, LLC, Attorney Ethan Wood of Normandin, Cheney & O'Neil, PLLC and Mark Koss, Koss Construction.

Mr. Focareto thanked the Board for their time in going through the process, noting it has been a lengthy process. Mr. Focareto noted that they had not received the 3rd party review by KV Partners. He was in contact with Mr. Korber of KV Partners earlier in the day, asking where he stood in the process. Mr. Korber indicated that it is open and actively being reviewed, however not giving an estimated date of completion. Based on that fact, Mr. Focareto indicated that he had spoken with the Planner, asking whether or not this evening's meeting could be productive without the technical review. He noted that they would like to address some of the concerns that have been voiced by the public in regard to the community wells, ground water withdrawal, pollutant migration. In addition, Mr. Focareto noted the applicant was hoping to receive a determination by the board on the town regulation pertinent to the density. Based on those items and others, they mutually agreed that tonight's meeting could be productive without the 3rd party review in hand.

Mr. Focareto briefly updated the Board on a few things that have transpired since the prior meeting on March 9th. Mr. Focareto provided members with a letter dated March 14, 2022, to Ray Korber, KV Partners from Brown Engineering regarding Memorandum: Variance Request for 25-foot Wetland Setback in which Mr. Korber's summarization of his review of the Harbor Landing site plans in relation to impacts within the 25-foot wetland setback, as well as Brown Engineering's response to the KV Partners memo.

Mr. Focareto noted that NH DES had held an onsite visit of the site today. They walked the site and viewed the proposed crossing. They are awaiting DES' response for the permit.

Mr. Focareto introduced Abigail Fopiano, noting that she holds a Masters degree in hydrogeology and is a licensed professional geologist. For this project Ms. Fopiano is responsible for submitting the community well application to the Drinking Water and Groundwater Bureau at NHDES.

Ms. Fopiano gave a detailed overview of the community wells for the project that included the process required for application, implementation, testing, pumping, monitoring, and follow-up of the wells, which include the monitoring of several wells within a 1000 foot radius of the two community wells.

Members had questions regarding the testing of the wells. Will the wells become a public water supply? Where is the area in which the water from the testing will be released? Are members of the public still able to request their well to be monitored? How long would the wells be monitored? How long is the developer responsible for any effects of the community wells? How deep are the wells and how do they account for seasonal change? All questions were answered by Ms. Fopiano.

Chairman Hoch opened the hearing for public comment regarding the community wells.

Christopher Boldt of Donahue, Tucker & Ciandella, Attorney of behalf of the Town of Center Harbor. Mr. Boldt had a question relating to the application for the small groundwater removal permit and asked if the status of the adjacent two lots, the dry cleaners, and the gas station, were called out to DES. Ms. Fopiano replied yes to that question. Mr. Boldt questioned if the status of the aquifer was called out to DES. Ms. Fopiano replied no, as she did not agree with that, giving her reasoning why. Mr. Boldt questioned if they were able to test the monitoring wells for contaminants. Ms. Fopiano stated they could. Mr. Boldt questioned once the well system is handed over to the association, how often does it need to be tested. Ms. Fopiano stated at least quarterly for the first year and annually thereafter. Mr. Boldt questioned if there was

any guarantee that the wells will not have an adverse effect on abutters, nearby or wells in the community. Ms. Fopiano replied that you cannot control that.

Don Carey – 35 Bean Road. Mr. Carey noted he was an abutter and was a Conservation Commission member for the Town of Center Harbor. Mr. Carey noted he had provided Planner Sassan documentation on testing and contaminants for the laundromat property going back many years, noting the latest testing was in 2014. Mr. Carey noted concerns with pollutants with his well, the two wells for the Town of Center Harbor, and others. Mr. Carey stated his well has gone dry at one point, asking what recourse would he have if his well went dry, or contaminants were found in his well? Would the Town be responsible for any type of compensation, the homeowner's association, or the builder? Mr. Carey requested a bond in the amount of \$500,000 or \$1,000,000 be required for a 10-year period to cover the cost of any potential issues whether it's contaminant or anything that will affect the abutters and the Town of Center Harbor.

Mr. Larson questioned when did the 1-year start for the testing of the wells, and will they be tested quarterly until all units are completed? The wells will begin testing once they service 25 people or more, or fifteen homes.

Attorney Mark Rouvalis – representing Bryan and Elana Murphy – 36 Bean Road. Mr. Rouvalis questioned if they would be doing water quality testing of the neighbors who are participating in pump test. Ms. Fopiano stated yes. They will be in line with the rules pertaining to the monitoring of private wells, further explaining the concerns and measures taken for the presence of bacteria pre and post testing.

Mr. Rouvalis questioned if Ms. Fopiano was able to provide to the public the preliminary report, DES' letter and their response to that? Ms. Fopiano responded yes, it is with the state, and it could be provided to the Town. It was requested by the Chair to be provided to the Town and added to the website with the materials for the project already posted. Attorney Boldt stated for the record that they can get tested, the Town of Center Harbor has requested their wells be tested.

Carla Taylor – 34 Bean Road. Ms. Taylor clarified comments she heard this evening, first the common law that they all have the use of the water. She noted her concern with the process, not knowing what has been going on with their "common water" source, and the changes that have occurred to her well. Ms. Taylor noted there is nothing in place to continue to test her water. She noted concerns with possible contaminants coming from the north that have not reached their wells as they will be pulling from the north. Can that happen, when it happens it seems that it is their responsibility to test their water and monitor it. After they are done completing the professional testing, they are gone. They will then have to deal with a condominium association. Who mitigates any issues? Ms. Fopiano stated that is part of the permitting process for the well. They will come up with a mitigation plan of how it might be mitigated. There are times when the impacts are too great, and you cannot do that. Part of the common law also is that you cannot change groundwater flow in a way that will severely impact people in any way. Often you are able to solve any impacts that you may have with other mitigation measures. Ms. Taylor asked that the board consider the proposal made by Mr. Carey requesting a bond to protect their wells as there is nothing built into this now to continue to test their wells if there is something to come up.

Mr. Larson questioned when the permitting process ends. Ms. Fopiano replied the permitting process ends when the state gives you the approval to use the wells at what you requested with whatever conditions. At that point you wait until it triggers the public water supply rules and regulations.

Ms. Kelly questioned how often should you test your well? Ms. Fopiano replied every three years.

Mark Taylor – 34 Bean Road. Mr. Taylor noted that since the January 24th five hour draw down test, they have had to do repair work to their toilet due to sediment and silt, their dishwasher has thrown a code for water pressure, and he is now concerned with his washing machine.

Andrea Hubbard – 10 Bean Road. Ms. Hubbard noted her concerns with contaminants and her sump pump. She agreed with the request for a bond in the amount of \$500,000 or \$1,000,000 for a 10-year period.

Mr. Quinlan related the wells to a stormwater management design and stormwater management plan. In this case there should be a water system design with a water system maintenance plan and that responsibility would be with the water company to administer it. It would be his hope that with administering that, there would be meters on every house that would meter the water consumption, and meters on the wells that would monitor the entire system. The cost of that water company service, support and maintenance should be changed on a fee level basis to all the homeowners so that there is continuing maintenance and ongoing support financially to assure that proper testing is being carried out. Ms. Fopiano noted that this system will require a water business plan and a capital improvement plan as well.

Mr. Quinlan stated to the board and public, for purposed of full disclosure, Attorney Wood is also representing the association that he is affiliated with on some updating of bylaws and one potential conflict in that association. He does not believe that it conflicts with anything here, noting that he knows many members of the audience could have a similar situation. Mr. Quinlan wanted to note for the record that Attorney Wood was representing that association in a small matter, and he does not believe that it affects his ability to be an impartial juror of the situation here. It was noted for the record that the Board did not have any issues with Mr. Quinlan's disclosure and was comfortable with moving forward.

Chairman Hoch referred to a waiver request for the Alteration of Terrain Permit, asking what the term Ksat was. Mr. Focareto stated that is a hydraulic conductivity of the soil. Mr. Focareto briefly explained Ksat values noting that sand would have a high Ksat value as water would go through it quickly, and clay would have a very low Ksat value, which is mostly impermeable. Mr. Bartlett commented that the stormwater management plan and remediation plan that was submitted shows that there will be no increase in water leaving the site than is currently leaving the site. Mr. Focareto stated that was correct, adding in volume and speed.

Planner Sassan commented that the Board had received comments from the general public regarding Ms. Fopiano's presentation on the wells, along with the comments made by Mr. Focareto, which is the only new information presented this evening. He suggested that the Chair may wish to open the hearing up for public comment later this evening.

The Planner noted there were two issues which the board could take up at this time, one being the road width. It is necessary to go through some of the determinations that were made to get the case open, and another is to revisit the density issue which should be looked at this evening.

Members briefly discussed the road width with the Chairman commenting that "roadway #1" was depicted as 24 feet in width, with the remaining being 20 feet in width. Planner agreed that was what is on the most current set of plans. Mr. Sassan noted the memo issued by Mr. Korber specifically for the purpose of the zoning board application which talks about potentially reducing the impacts and reducing the variances by narrowing the roadway width. Mr. Sassan thought that is why it is important that the planning board take up this issue. He stated the subdivision regulations require a road width of 24 feet based on the trips per day being greater than 400, and it is within the Board's purview to waiver that width. Mr. Bartlett noted the merits for waiving the width would be less impact on the wetlands and safety. Planner Sassan commented that narrowing a road has a traffic calming effect, where it encourages cars to go slower and is considered a widely accepted benefit of narrowing roads. Mr. Sassan noted one concern presented was the narrowing of the road with a surface level sidewalk could put pedestrians in a dangerous position. Part of Mr. Korber's recommendation was to elevate the sidewalk, so the narrowing of the road did not have that adverse impact on pedestrians. In addition to reducing the encroachment towards the wetland, the reduction in impervious surfaces is considered a benefit, so long as it can be done safely.

Mr. Focareto stated the original layout was for a 24 foot wide roadway with a painted line delineating the sidewalk. Now the proposal is for a 20 foot wide roadway with a raised sidewalk throughout the entire site. Mr. Focareto noted that they are willing to lower the speed limit to a posted 15 MPH.

So that the applicant may move forward the Chair called for a sense of the board that if a waiver request were submitted for a roadway width of 20 feet, with a raised sidewalk throughout the site, and a posted speed limit of 15 MPH. Board members were favorable of this design as discussed.

Chairman Hoch took up the issue regarding dwelling unit density in the West Village Overlay District (WVOD).

Mr. Hoch was requesting a sense of the board regarding the density. He noted the areas of the zoning ordinance and the subdivision regulations with may affect the density requirements. It was the Chairman's opinion that the Board agreed with the 10,000 square feet per dwelling unit. The WVOD does allow for the Board to modify the density if need be. When looking at the subdivision regulations, Section 6.1.3, 6.1.4 and 6.1.5, all get into the basic calculation, each noting areas that shall not be included in the calculations and may affect the lot sizing. The Chair noted the applicant may request waivers from the subdivision regulations.

Planner Sassan reiterated what the Chairman's said, from a zoning standpoint the permitted density in the West Village Overlay district is 1 unit per 10,000 square feet. The project is also here for subdivision and Section 6.1.3 of the subdivision regulations talks about potentially deducting land from the calculation. He believes that it provides a certain level of discretion, and it is necessary that the board apply both the discretion that it has within exercising the subdivision regulations and also consider that the WVOD is an innovative land use control ordinance and grants the Planning Board the authority under that ordinance to flex the density for the purposes of meeting the goals of the overlay district. Additionally, as the Chair noted, if it is the subdivision regulations that are serving to limit the density, there are waivers options. It's not a zoning limit, it's something that is in subdivision regulations and potentially that could be addressed through a waiver.

Discussion ensued regarding the unit density sizing with comments made from various members of the board and the public.

Mr. Bartlett commented that this site has been designed with a very comprehensive stormwater management plan and was verified again this evening that no additional water will be going off the site than presently escapes the site post development. With the consideration of Section 6.1.3 you need to keep that in mind that the site will be mitigated according to the engineered design.

Mr. Larson noted the density requirements were established for the WVOD, they set the lot sizing at 10,000 square feet and they did not reference wells and other things, as the point of this area is to be able to tie into the systems that can provide for sewage disposal. Mr. Larson noted his concern with proposed units fitting in with the character of the neighborhood and that proposed #3 and #6 appear to be right up against the property line.

Ms. Kelly stated that she is the Planning Board representative on the Conservation Commission and felt strongly that the with the amount of square footage of roadway and roofs, that there will be extra water runoff. She feels strongly that there needs to be a deduction for the wetlands.

Mr. Quinlan stated the applicant has provide a stormwater management report that indicated that nothing basically changes. He surmises that takes into account the roofs, impervious surfaces, and things of that nature. In terms of the look and feel of the project, there is a vegetative buffer, and this is a development that is off the road. The intent of the "New England look" in that area is more in line with if you were going to build something on Bean Road, then it should be something similar to what is already

there. Mr. Quinlan does not have a problem with the design of the homes. He noted that he was okay with the wells, roadway, and the density as he thinks they meet the requirements.

Mr. Claypoole shared in Mr. Larsons concerns with the development being on Bean Road and what you may see when driving by. He noted his concerns with what the current residents on Bean Road will see out the back of their houses and how that changes the experience of living in that quaint part of New Hampshire. There was a brief discussion as to what if any measures there may be to screen a two story unit.

Planner Sassan commented that if the Applicant had interest in seeking waivers from those elements of the subdivision regulations, he would recommend following that path. It sounds like there is agreement about the actual zoning determination itself. That may be able to be solidified that at the zoning level it is one unit per 10,000 square feet. Mr. Sassan noted that the deductions come in the subdivision regulations. It may make sense to look at the best way to handle this. This discussion has been very useful and gives a good understanding of where the board stands, and some thought could lead to the best approach going forward.

Attorney Ethan Wood stated what would be important to the Applicant, is the board making a determination tonight with regard to whether or not the wetlands are included or not include in the density calculation because that will impact the manner in which the project moves forward.

Planner Sassan commented if the goal is to seek a determination on whether wetlands are counted, would it not be an acceptable approach to simply submit a waiver pursuant to section 6.1.3, or is that not the best approach? Mr. Wood replied they were okay with waivers on that but want to make sure that a determination about whether or not a variance is subsequently necessary if the density calculation does not include wetlands. The project was proposed based on the understanding that the wetlands are not excluded from the calculation. Mr. Sassan stated if the board's basis for deducting wetlands is within the subdivision regulations, then a waiver could be sought for that. Why would it make sense for the Board to make its own determination on that when they have the option of waiting for a waiver request to be submitted so they could potentially grant that waiver and address the issue that way. Mr. Wood noted that they were okay with that proposed course of action. Mr. Quinlan questioned if the board made the determination that the wetlands are not deducted, then why would you need a waiver?

Attorney Boldt agreed with Mr. Wood that the board needs to make a determination that the zoning ordinance does or does not apply because you have a number of provisions that are outside of the WVOD, Chapter 9 Sections, that he read apply to all project, those include 3.2.1.3, 3.2.1.7, that expressly say you exclude poorly drained and very poorly drained soils from the lot size calculations. Accordingly, if you just do the wavier provision, they do need to get a variance to not deduct the amount of wetlands that are on the lots. For purposes of how the Applicant and abutters choose to make the next step, it is appropriate that the board make a zoning determination. A zoning determination gets appealed by whoever is disgruntled to the ZBA to determine if they got it right.

Attorney Rouvalis agreed with Mr. Wood and Mr. Boldt that the board needs to make a determination and find that Sections 6.1.3, 6.1.4 and 6.1.5 apply.

Motion: Mr. Bartlett moved that the proposed 60 units complies with the density requirements given the WVOD in zoning. Mr. Quinlan Seconded. Motion carried four in favor (Quinlan, Larson, Claypoole, Bartlett) two opposed (Kelly, Hoch).

Motion: Mr. Bartlett moved to continue the public hearing for Koss Construction LLC (140-16 & 170-12) to April 13, 2022. Mr. Quinlan Seconded. The Motion carried unanimously.

Mr. Larson stated that he concurred with the motion, requesting confirmation that the board has for other reasons a limitation of what kind of density is allowed in the 50 foot buffer.

Planner Sassan noted that the Applicant has waived the 95-day clock, if any continuation goes past April 13, 2022, they will need to approve and additional extension of that clock.

Mr. Bartlett commented that the Applicant has done an admiral job on the well situation, and he requested that they seriously consider the things that they have heard at the hearing this evening about the necessity of providing additional buffer capability and also some comments from the neighbors about making sure they carry on the water testing program for a period longer than the minimum state requirements. Mr. Koss stated they could implement whatever DES regulation water bureau has into the bylaws of the condominium association.

Planner Sassan noted for the record the receipt of letters from Maranda Blackey and Bruce Cohen.

VII. Other Business/Correspondence: - None

VIII. Committee Reports: - None

X. Project Updates:

1. Planner Sassan provided members with the final language for the proposed zoning amendment relating to non-conforming structures. Members had discussed this at a public hearing held on March 14, 2022. It was the recommendation of Town Counsel that a second (final) planning board public hearing be held on this proposed amendment. This final public hearing will be held on Wednesday, March 30, 2022, with a snow date of Monday, April 4, 2022. All Public Hearings will begin at 6:00 PM. here in Town Hall.

Planner Sassan noted that there will be overview presentation on affordable housing given by Carmen Lorentz of Lakes Region Community Developers and George Reagan of New Hampshire Housing Finance Authority following the public hearing on March 30, 2023, beginning at approximately 6:30 PM

2. Mr. Larson provided members with a copy of the 2021 Planning Board work plan. Mr. Larson stated that he has been following the Land Use Task Group (LUTG) and has been concerned lately as the LUTG seemingly has morphed into some kind of executive planning board. While it is appropriate for the Planning Board to designate parties or groups to take on the types of projects thought to be important, he is concerned that the group some are involved in, along with others who are not part of the Planning Board, and not elected to do planning in effect, are charged with enforcing the zoning ordinance the Board creates and adopts, are making decisions about what things need to change. Mr. Larson feels that the decisions about what should be changed or worked on by the Planning Board should be made here at this level, and the Planner or other groups should be reporting new ideas to the Board before it goes out to the LUTG.

Mr. Bartlett commented that the LUTG was formed in an effort to help staff with the background research and time involved in working on such ideas. Often times there are applications that come before the zoning board of adjustment for similar relief. The LUTG vets those scenarios seeing if there is a need to amend the ordinance. This will be discussed further at a late date.

X. Adjournment: Mr. Bartlett made the motion to adjourn. Mr. Larson Seconded. The Motion carried Unanimously, and the Board adjourned at 10:11 PM.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant

NOTICE: These DRAFT Minutes have not been formally approved by the Planning Board. Please contact the Land Use Department after the next meeting of the Moultonborough Planning Board to learn if any corrections, additions, or deletions were made.